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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

RICARDO DESANTIAGO,

Defendant and Appellant.

F057868

(Super. Ct. No. BF122109C)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. David R. Lampe, Judge.

Jeffrey S. Kross, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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* Before Cornell, Acting P.J., Kane, J., and Poochigian, J.

STATEMENT OF THE CASE

On July 17, 2008, appellant, Ricardo DeSantiago, was charged in an information with first degree murder (Pen. Code, § 187, subd. (a), count one),¹ with a special circumstance allegation for a prior murder conviction (§ 190.2, subd. (a)(2)). It was further alleged that appellant personally used a deadly weapon (§ 12022, subd. (b)(1)), had a prior serious felony conviction under the three strikes law (§§ 667, subds. (c)-(j), 1170.12, subds. (a)-(e)), and had a prior serious felony conviction pursuant to section 667, subdivision (a).

Before the attorneys could complete all of their opening arguments to the jury on April 8, 2009, appellant told the court he wished to plead guilty to murder. Appellant was willing to admit all of the allegations in the information, including the special circumstance allegation. Appellant's counsel advised appellant of the consequences of his plea. The prosecutor advised appellant that he faced a sentence of life without the possibility of parole if he admitted the allegations.

The court advised appellant of the consequences of his plea. The court advised appellant of, and appellant waived, his rights pursuant to *Boykin/Tahl*.² Appellant told the court he had discussed his case with his counsel, including potential defenses. Appellant understood his rights and had no further questions concerning his plea. Appellant again waived his rights, including his right to appeal. The parties stipulated that the incident report from the prison, the preliminary transcript, the appellant's section 969(b) packages, the medical reports, and investigators' photographs constituted the factual basis for the plea.

¹ Unless otherwise indicated, all statutory references are to the Penal Code.

² *Boykin v. Alabama* (1969) 395 U.S. 238; *In re Tahl* (1969) 1 Cal.3d 122.

Appellant pled no contest to first degree murder. Appellant admitted the prior serious felony conviction pursuant to the three strikes law and a prior serious felony conviction pursuant to section 667, subdivision (a). Appellant also admitted the weapon enhancement. The court imposed a prison term of life without the possibility of parole, plus consecutive terms of five years for the section 667, subdivision (a), enhancement and one year for the weapon enhancement. Appellant's sentence was made consecutive to the sentence he was serving when he committed the instant offense. Appellant filed a timely notice of appeal. His request for a certificate of probable cause was denied.

FACTS

On February 14, 2007, at 7:00 p.m., Officer Jaime Mercado was working at the control booth at Kern Valley State Prison. Mercado released four inmates – appellant, Bustamante, Maese, and Sanchez – for evening day room time. Sanchez told Mercado he was going to take a shower. The other inmates were to the right of the shower. Appellant, Bustamante, and Maese then rushed Sanchez and began striking him in the face and upper torso. Mercado hit his alarm and ordered them to stop, get down and prone out.

Mercado did not see a weapon. When Mercado ordered the inmates down, they did not comply. Mercado fired a foam round from his rifle, but could not tell if he hit anyone. After Mercado ordered the inmates down a second time, they complied. Sanchez was lying on his back.

Appellant got onto his knees, lunged forward, landed on top of Sanchez, and put his left hand over Sanchez's body. Mercado ordered appellant down and fired a second foam bullet at him. Mercado saw appellant make four or five quick stabbing motions to Sanchez's upper torso before he rolled off to Sanchez's side.

When medical personnel arrived, Mercado saw massive bleeding from Sanchez's body from his upper torso. Sanchez also had scratch marks on his face and arms. Mercado never saw Sanchez holding a weapon.

Officer Daniel Peters worked in the investigative services unit of the prison. Peters searched the cells of the four inmates. Peters found a metal weapon in the toilet of one of the inmate's cell. Prison employee Katherine Taamilo testified that Sanchez was taken to Delano Regional Medical Center. Sanchez died that evening. Taamilo attended the autopsy of Sanchez. Sanchez suffered 18 puncture wounds to his upper torso. Wounds to both lungs and the pulmonary artery were fatal.

APPELLATE COURT REVIEW

Appellant's appointed appellate counsel has filed an opening brief that summarizes the pertinent facts, raises no issues, and requests this court to review the record independently. (*People v. Wende* (1979) 25 Cal.3d 436.) The opening brief also includes the declaration of appellate counsel indicating that appellant was advised he could file his own brief with this court. By letter on October 27, 2009, we invited appellant to submit additional briefing. To date, he has not done so.

After independent review of the record, we have concluded there are no reasonably arguable legal or factual issues.

DISPOSITION

The judgment is affirmed.